

No. 3983

**UNITED STATES OF AMERICA
and
JAPAN**

**Agreement (with Protocol) to facilitate interchange of
patent rights and technical information for purposes
of defense. Signed at Tokyo, on 22 March 1956**

Official texts: English and Japanese.

Registered by the United States of America on 20 August 1957.

**ÉTATS-UNIS D'AMÉRIQUE
et
JAPON**

**Accord (avec Protocole) en vue de faciliter l'échange mutuel
de brevets et de renseignements techniques pour les
besoins de la défense. Signé à Tokyo, le 22 mars
1956**

Textes officiels anglais et japonais.

Enregistré par les États-Unis d'Amérique le 20 août 1957.

No. 3983. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF JAPAN TO FACILITATE INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION FOR PURPOSES OF DEFENSE. SIGNED AT TOKYO, ON 22 MARCH 1956

The Government of the United States of America and the Government of Japan,

Having agreed in the Mutual Defense Assistance Agreement between the United States of America and Japan signed at Tokyo on March 8, 1954,² to make, upon the request of either of them, appropriate arrangements between them respecting industrial property rights and technical information ;

Desiring generally to assist in the production of equipment and materials for defense, by facilitating and expediting the interchange of patent rights and technical information under the Mutual Defense Assistance Agreement ; and

Acknowledging that the rights of private owners of patent rights and technical information should be fully recognized and protected in accordance with the law applicable to such patent rights and technical information ;

Have agreed as follows :

Article I

Each Government shall, whenever practicable without undue limitation of, or impediment to, defense production, facilitate the use of patent rights, and encourage the flow and use of privately-owned technical information, as defined in Article VIII, for purposes of defense,

(a) through the medium of any existing commercial relationships between the owner of such patent rights and technical information in one country and those in the other country having the right to use such patent rights and technical information ; and

¹ In accordance with article IX (a), the Agreement came into force on 6 June 1956, the date of receipt by the Government of the United States of America of a note from the Government of Japan stating that Japan has approved the Agreement in accordance with its legal procedures.

² United Nations, *Treaty Series*, Vol. 232, p. 169 ; Vol. 251, p. 404 ; Vol. 265, Vol. 272, and Vol. 273.

(b) in the absence of such existing relationships, through the creation of such commercial relationships by the owner and the user ;
provided that, in the case of classified information, such arrangements shall not conflict with security requirements, and provided further that the terms of all such arrangements shall be subject to the applicable laws of the two countries.

Article II

When, for purposes of defense, technical information is supplied by one Government to the other for information purposes only, and such fact is so stipulated at the time of supply, the recipient Government shall treat the technical information as disclosed in confidence and use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the owner thereof to obtain patent or other like statutory protection therefor.

Article III

When technical information made available, under agreed procedures, by one Government to the other for purposes of defense discloses an invention which is the subject of a patent application held in secrecy in the country of origin, similar treatment shall be accorded a corresponding patent application filed in the other country.

Article IV

(a) Where privately-owned technical information

- (i) has been communicated by or on behalf of the owner thereof to the Government of the country of which he is a national, and
- (ii) is subsequently disclosed by that Government to the other Government for purposes of defense and is used or disclosed by the latter Government without the express or implied consent of the owner,

the Governments agree that, where any compensation is paid to the owner by the Government first receiving the information, such payment shall be without prejudice to any arrangements which may be made between the two Governments regarding the assumption as between them of liability for compensation. The Technical Property Committee established under Article VI of the present Agreement will discuss and make recommendations to the Governments concerning such arrangements.

(b) When, for purposes of defense, technical information is made available by a national of one country to the Government of the other country at the latter

Government's request and is subsequently used or disclosed by that Government for any purpose whether or not for defense, the recipient Government shall, at the owner's request, take such steps as may be possible under its laws to provide prompt, just, and effective compensation for such use or disclosure to the extent that the owner may be entitled thereto under such laws.

Article V

When one Government, or an entity or agency owned or controlled by such Government, owns or has the right to authorize the use of an invention or technical information and that invention or technical information is used by the other Government for purposes of defense, the using Government shall be entitled to use the invention or technical information without cost, except to the extent that there may be liability to a private owner with established interests in the invention or technical information. The two Governments shall cooperate to ensure that, prior to such use, the using Government is informed of any such established interests in the invention or technical information.

Article VI

Each Government shall designate a member (or members) to constitute a Technical Property Committee. It shall be the function of this Committee :

- (a) To consider and make recommendations to the Governments on such matters relating to the subject of the present Agreement as may be brought before it by either Government ;
- (b) To make recommendations to the Governments concerning any question, brought to its attention by either Government, relating to the interchange or use of patent rights and technical information for purposes of defense ;
- (c) To assist, where appropriate, in the negotiation of commercial or other agreements for the use of patent rights and technical information for purposes of defense ;
- (d) To take note of pertinent commercial or other agreements for the use of patent rights and technical information for purposes of defense, and, where necessary and appropriate, to obtain the views of the two Governments on the acceptability of such agreements ;
- (e) To assist, where appropriate, in the procurement of licenses and to make recommendations to the Governments, where appropriate, respecting payment of indemnities covering inventions or technical information used for purposes of defense ;
- (f) To facilitate the interchange and use of patent rights and technical information in connection with technical collaboration between and among the defense services of the two Governments ;

- (g) To keep under review all questions concerning the use, for purposes of defense, of all inventions or technical information which are, or hereafter come, within the provisions of Article V ;
- (h) To make recommendations to the Governments, either with respect to particular cases or in general, on the means by which any differences between the principles of the two countries governing the compensation for or otherwise concerning technical information made available for purposes of defense might be adjusted.

Article VII

Upon request, each Government shall, as far as practicable, supply the other Government all necessary information and other assistance required for the purposes of :

- (a) affording the owner of an invention or technical information made available for purposes of defense the opportunity to protect and preserve any rights he may have in the invention or technical information ;
- (b) assessing payments and awards arising out of the use of patent rights and technical information made available for purposes of defense.

Article VIII

(a) "Technical information" as used in the present Agreement means information originated by or peculiarly within the knowledge of the owner thereof and those in privity with him and not available to the public.

(b) "Patent rights" means in the application of the present Agreement in Japan those rights which are granted under the Patent Law or the Utility Model Law of Japan, and in the application thereof in the United States of America those rights which are granted under the Patent Laws of the United States of America.

(c) The term "use" includes manufacture by or for a Government.

(d) Nothing in the present Agreement shall apply to patent rights, applications for patent rights and technical information in the field of atomic energy.

(e) Nothing in the present Agreement shall contravene present or future security arrangements between the Governments.

Article IX

(a) The present Agreement shall enter into force on the date of receipt by the Government of the United States of America of a note from the Government of Japan stating that Japan has approved the Agreement in accordance with its legal procedures.

(b) The terms of the present Agreement may be reviewed at the request of either of the two Governments or amended by agreement between them at any time.

(c) The present Agreement shall terminate on the date when the Mutual Defense Assistance Agreement between the United States of America and Japan signed at Tokyo on March 8, 1954, terminates or six months after the date of receipt by either Government of a written notice of the intention of the other to terminate it, whichever is earlier, but without prejudice to obligations and liabilities which have then accrued pursuant to the terms of the present Agreement.

IN WITNESS WHEREOF the representatives of the two Governments, duly authorized for the purpose, have signed the present Agreement.

DONE in duplicate, in the English and Japanese languages, both equally authentic, at Tokyo, this twenty-second day of March, one thousand nine hundred fifty-six.

For the Government of the United States of America :

John M. ALLISON

[SEAL]

For the Government of Japan :

Mamoru SHIGEMITSU

[SEAL]

PROTOCOL

At the time of signing the Agreement between the Government of the United States of America and the Government of Japan to Facilitate Interchange of Patent Rights and Technical Information for Purposes of Defense¹ (hereinafter referred to as the Agreement), the undersigned representatives, duly authorized by their respective Governments, have further agreed upon the following provisions, which shall be considered integral parts of the said Agreement :

1. Nothing in the Agreement shall be understood to exempt from taxation royalties or similar compensation paid in connection with the use of patent rights and technical information for purposes of defense.
2. Nothing in the Agreement shall be construed as requiring privileged treatment with regard to conversion of yen payments and remittances in foreign currency to be made from Japan in connection with the use of patent rights and technical information for purposes of defense.
3. Subject to the provisions of Article III of the Agreement and in order to meet to the maximum extent possible the objectives of that Article, the Government of Japan undertakes that :
 - (a) When the applicant or the successors of such applicant for an invention which is the subject of a patent application held in secrecy in the United States of America and made available to the Government of Japan by the Government of the United States of America as referred to in Article III of the Agreement, files in Japan a patent application or utility model registration application for the same invention, such patent application or utility model registration application (hereinafter referred to as Agreement Application) shall not be published by the Government of Japan until such time as the above-mentioned patent application in the United States of America ceases to be held in secrecy.
 - (b) When a patent application or utility model registration application, other than an Agreement Application, filed in Japan on a date subsequent to the date of filing of an Agreement Application would, if published, make public the invention or utility model which is the subject of the said Agreement Application, such application shall not, until such time as provided for in subparagraph (a) above, be published by the Government of Japan, except when the invention or utility model which is the subject of such subsequent application is patentable or registrable and was made independently of the invention or utility model which is the subject of the said Agreement Application.
4. With respect to paragraph 3 of the present Protocol the Government of the United States of America undertakes :

¹ See p. 216 of this volume.

- (a) To notify the Government of Japan, under agreed procedures, that a patent application is held in secrecy in the United States of America, such notification to be made on or before the date of filing of an Agreement Application for the invention which is the subject of such patent application held in secrecy, and to use its best endeavors to ensure that applicants for Agreement Applications attach to their applications appropriate documents identifying them as such.
- (b) To notify the Government of Japan, under agreed procedures, that a patent application held in secrecy in the United States of America is no longer so held, whenever an Agreement Application for the invention which is the subject of such patent application held in secrecy has been filed in Japan.

5. The procedure for the giving of notifications pursuant to paragraph 4 of the present Protocol and the form and content of the identifying documents to be attached to Agreement Applications, which identifying documents are referred to in paragraph 4 (a) of the present Protocol, shall be agreed upon in the Technical Property Committee as part of its functions under the Agreement.

6. The provisions on dates of filing of applications, contained in paragraph 3 (b) of the present Protocol, are subject to the provisions on priority rights in the Union Convention of Paris of March 20, 1883, for the Protection of Industrial Property, revised at Brussels December 14, 1900, at Washington June 2, 1911, at The Hague November 6, 1925, and at London June 2, 1934.¹

IN WITNESS WHEREOF the respective representatives have signed the present Protocol.

DONE in duplicate, in the English and Japanese languages, both equally authentic, at Tokyo, this twenty-second day of March, one thousand nine hundred fifty-six.

For the Government of the United States of America :

John M. ALLISON

For the Government of Japan :

Mamoru SHIGEMITSU

¹*British and Foreign State Papers*, Vol. 74, p. 44 ; Vol. 92, p. 807, and Vol. 104, p. 116 ; League of Nations, *Treaty Series*, Vol. LXXIV, p. 289 ; Vol. LXXX, p. 464 ; Vol. LXXXVIII, p. 366 ; Vol. XCII, p. 403 ; Vol. C, p. 246 ; Vol. CIV, p. 512 ; Vol. CVII, p. 506 ; Vol. CXVII, p. 185 ; Vol. CXXX, p. 448 ; Vol. CXXXIV, p. 405 ; Vol. CXXXVIII, p. 443 ; Vol. CXLVII, p. 335 ; Vol. CLVI, p. 205 ; Vol. CLXIV, p. 378 ; Vol. CXCLII, p. 17, and Vol. CCV, p. 218 ; and United Nations, *Treaty Series*, Vol. 1, p. 269 ; Vol. 32, p. 406, and Vol. 267, p. 680.